

In the High Court of Judicature at Madras

Dated:22.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. MANIKUMAR

Habeas Corpus Petition Nos.618, 619 & 622 of 2006

Jaisingh
Esther @ Lakshmi
Mrs. Velthangam

.. Petitioner in HCP.618/06
.. Petitioner in HCP.619/06
.. Petitioner in HCP.622/06

vs.

1. State of Tamil Nadu
rep. By Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai 600 009.

2. The District Magistrate
and District Collector
Thoothukudi District,
Thoothukudi.

.. Respondents in all HCPs.

Petitions filed under Article 226 of the Constitution
of India praying for issuance of writ of habeas corpus as stated
therein.

For petitioners : Mr. Abudukumar Rajarathinam
for Mr. K.J. Saravanan (618/06)
for Mr. M. Sathishkumar (619/06)
for Mr. G. Vijayakumar (622/06)

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

..

COMMON ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The respective petitioners who are the brother/husband of the detenus, by name, Dhara @ Dharasingh, Arulraj and Sivalingam, who were detained as "Goondas" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention orders all dated 11.06.2006, challenge the same in these Petitions.

2. Heard learned counsel for the petitioners as well as the learned Additional Public Prosecutor for the respondents.

3. For the sake of convenience, first we will decide the case in HCP.No.618 of 2006. Mr. Abudukumar Rajaratnam, learned counsel for the petitioner after taking us through the grounds of detention and other documents supplied to the detenu, contended that there are no acceptable materials before the detaining authority for passing the impugned order of detention and in the absence of relevant materials before the detaining authority, his ultimate order detaining the detenu as Goonda cannot be sustained. Elaborating the above contention, learned counsel for the petitioner submitted that though the detaining authority has stated in the grounds of detention that the detenu was remanded on 20.04.2006, there is no material to show that the detenu was remanded on that date and non-furnishing of the initial remand order, a vital and relied upon document, would vitiate the detention order.

4. In para 4 of the grounds of detention, the detaining authority has specifically stated that he is aware that Dhara @ Dharasingh had been remanded to judicial custody by the Judicial Magistrate, Vilathikulam from 20.04.2006 to 04.05.2006 in the ground case in Crime No.43 of 2006 and the remand was extended till 13.06.2006. It is not in dispute that the detention order was passed on 11.06.2006. Though in the remand requisition the sponsoring authority has specifically stated that the accused in the ground case was arrested on 19.04.2006 and remand was sought for, the fact remains there is no document to show that the detenu was remanded by an order of Magistrate. Paragraph 4 of the grounds of detention shows that his remand period was extended till 13.06.2006. The extension order was duly placed before the detaining authority and supplied to the detenu, but the paper book does not contain the initial order of remand remanding him from 20.04.2006 to 04.05.2006. Let us consider the decisions placed before us.

5. In 2000 (2) Madras Weekly Notes (Cri.) 155 (Ambicka vs. Chief Secretary to Government, Public (L&O-F) Department, Fort St. George, Madras-9), a Division Bench of this Court held that remand extension order is a relied upon document within the terms of the law laid down in Pawanammal's case (1999 SCC (Cri.) 231) and the supply of copy of the same to the detenu is imperative. In that case, the copy of the said material document was supplied after three months. After finding that the supply of document after three months would be of no consequence, the Bench quashed the detention order. Though the learned counsel heavily relied on the above said decision, a perusal of the factual details in that case shows that by order dated 04.10.1999, the remand was extended upto 15.10.1999 and the detention order was passed on 11.10.1999. In that context, in the absence of remand extension order, the Division Bench has concluded that the detaining authority has actually relied upon that document (remand extension order) in the sense that he was aware that on that date the detenu was in remand, and held that in that way it became a relied upon document within the terms of law laid down in Pownammal's case.

6. In 2005 M.L.J. (Crl.) 468 (Bepari Saleem vs. State of Tamil Nadu and others, after finding that the remand extension order which was relied upon by the detaining authority, was not supplied to the detenu within time, the Division Bench quashed the detention order.

7. In 1999 SCC (Cri.) 231 Powanammal vs. State of Tamil Nadu and another, the Supreme Court has held that the copies of document relied on in the grounds of detention must be furnished in the language understood by the detenu and non-supply of the same would be fatal.

8. Coming to our case, it is not in dispute that by order dated 30.05.2006, after finding that all the accused were produced through video-conferencing, remand was extended till 13.06.2006. The said document has been placed before the detaining authority and supplied to the detenu along with the grounds of detention. In such circumstances, though the detaining authority has stated in the grounds that the detenu was remanded from 20.04.2006 to 04.05.2006, but he was in possession of the remand extension order up to 13.06.2006 when he passed the detention order on 11.06.2006, yet, the non-possession of the original remand order would not affect the detention order, and we are satisfied that the decisions relied on by the learned counsel for the petitioner are not applicable to the cases on hand.

9. It is settled law that if it is a relied upon document, undoubtedly, the said document has to be placed before the detaining authority and copy of the same has to be furnished to the detenu along with copy of the detention order or within reasonable time. On the other hand, if the detaining authority has merely referred certain facts, there is no compulsion that all those documents are to be placed. Moreover, it is incumbent on the part of the detaining authority to arrive at subjective satisfaction that on the date of passing of the detention order the detenu was in remand by an order of Court. Admittedly, such a document was placed before the detaining authority and supplied to the detenu along with the grounds of detention. In this regard, it is useful to refer the latest decision of the Supreme Court in the case of 2006 (1) SCC Cri.257 Union of India vs. Chaya Ghoshal. The following conclusion of their Lordships are relevant.

"14. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ of right.

17. While dealing with a habeas corpus application, undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings, the court has to take serious note of unclean approach."

10. It is therefore clear that undue importance not to be attached to technicalities. Further perusal of all the materials clearly shows that the detenu was remanded on 20.04.2006 and the remand was periodically extended. It is also not in dispute that on the date of passing of the detention order the detenu was in remand and such a remand extension order was placed before the detaining authority and the copy was supplied to the detenu. In such circumstances, the contention of the petitioner that non furnishing of the initial remand order would vitiate the detention order cannot be accepted. It is also brought to our notice that the remand requisition which contains all the details on which the order of remand was passed is fully made in the language known to the detenu. Accordingly, we reject the said contention.

11. The learned counsel for the petitioner submitted that though reference was made to the bail application in Cri.M.P.No.645 of 2006 which was dismissed on 08.06.2006, copy of the bail application was not supplied in Tamil language and according to him, the belated supply of the same on 22.08.2006 will not cure the defect. Though the said copy of the bail application filed by the detenu was not supplied along with the grounds of detention, it is not in dispute that the Tamil version of the said document was furnished to him on 22.08.2006. In the absence of any prejudice shown by the detenu and in view of the fact that the copy was furnished on 22.08.2006, we reject the said contention also.

12. Except the above grounds, no other ground has been raised before us.

In the light of what is stated above, we do not find any error or infirmity in the impugned order of detention and there is no valid ground for interference. Hence, HCP.No.618 of 2006 fails and the same is dismissed. Since same grounds have been raised in HCP.Nos.619 and 622 of 2006, they are also dismissed in terms of the order made in HCP.No.618 of 2006.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Prohibition and Excise Department
Fort St. George
Chennai 600 009.

2. The District Magistrate
and District Collector
Thoothukudi District,
Thoothukudi.

3. The Public Prosecutor,
High Court, Madras

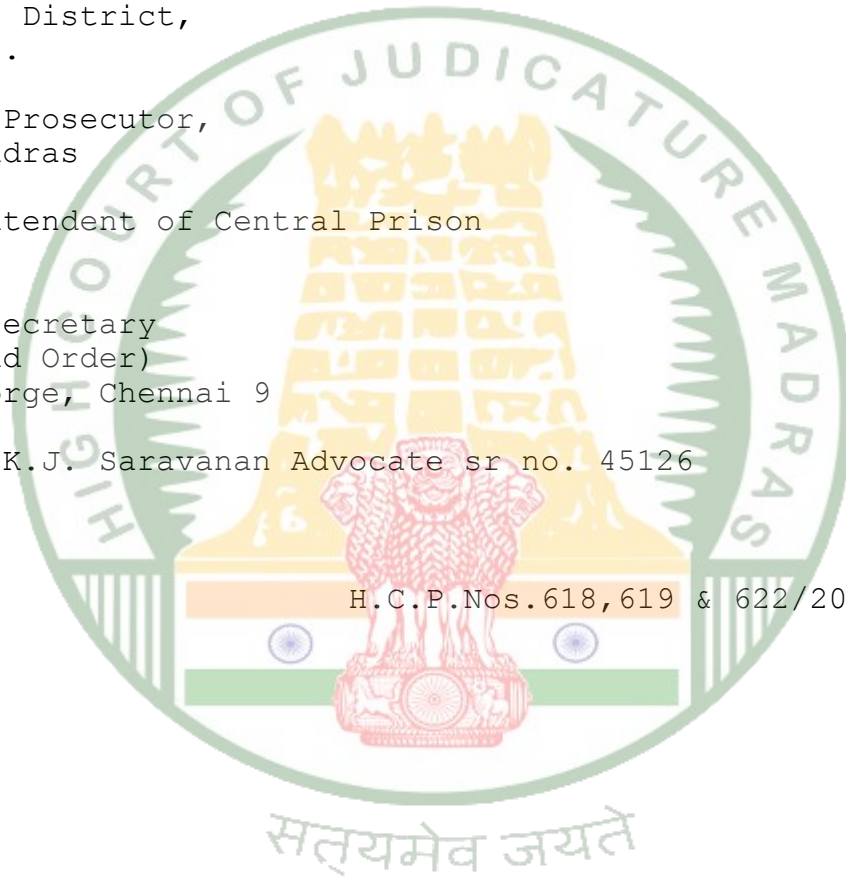
4. The Superintendent of Central Prison
Palayamkottai

5. The Joint Secretary
Public (Law and Order)
Fort Saint George, Chennai 9

+ 3 cc to Mr. K.J. Saravanan Advocate sr no. 45126

RA(CO)
NM(06.10.2006)

H.C.P.Nos.618,619 & 622/2006



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